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16 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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18 **Robert A. Pastor; Scott M. Van**
19 **Horn; Regina M. Florence; and**
20 **William E. Florence III; on behalf**
of himself and all others similarly
situated,

21
22 Plaintiffs,

23 v.

24 **Bank of America, N.A.,**

25
26 Defendant.
27
28

Case No.: 15-cv-03831-VC

**DECLARATION OF JOSHUA
SWIGART IN SUPPORT OF
PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF
NATIONWIDE CLASS ACTION
SETTLEMENT AND
CERTIFICATION OF
SETTLEMENT CLASS**

JUDGE: Hon. Vince Chhabria

DECLARATION OF JOSHUA B. SWIGART

1. I, Joshua B. Swigart, hereby declare under penalty of perjury, and pursuant to the laws of the State of California and the United States of America, that the foregoing is true and correct. If called as a witness, I would competently testify to the matters herein from my own personal knowledge.
2. I am a partner of the law firm of Hyde & Swigart and co-counsel of record for Plaintiffs Robert A. Pastor, Scott M. Van Horn, Regina M. Florence, and William E. Florence III (collectively as “Plaintiffs”) in the above-captioned action against defendant Bank of America, N.A. (“Defendant”). I am a member in good standing of the bars of the State of California, Washington, and District of Columbia. I am also admitted in every federal district in California and have handled federal litigation in Arizona, Washington, Minnesota, Tennessee and Texas. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.
3. I am writing this declaration in support of Plaintiff’s Motion for Final Approval of Nationwide Class Action Settlement and Certification of Settlement Class.
4. The Parties have litigated this dispute for three years, as the action was filed in the Northern District of California on August 21, 2015 (*Robert A. Pastor v. Bank of America*, 3:15-cv-03831-MEJ (N.D. Cal.)).
5. Early on in the litigation, the Parties agreed to mediation with an experienced mediator, Judge Infante. At the mediation on July 26, 2016, the Parties reached an agreement for settlement of the class.
6. In September 2016, Plaintiff propounded confirmatory written discovery including interrogatories in connection with the legal dispute. Defendant provided responses in January of 2017. In addition to the responses provided by Defendant, Plaintiff also took a confirmatory deposition of Defendant’s

F.R.C.P 30(b)(6) representative on January 12, 2017.

7. A written Settlement Agreement was finalized and fully executed in April of 2017 and a Revised Settlement Agreement and Release that superseded the original Agreement was fully executed by the parties on June 22, 2017.

8. It is my opinion that the nationwide settlement class as defined, consisting of approximately 586,801¹ people who had their credit pulled by Defendant, satisfies the requirements of Federal Rules of Civil Procedure 23 because all persons in the settlement class are persons who had their credit pulled by Defendant after the class members' relationship had ended with Defendant. I believe the settlement is fair and reasonable. I also believe the nationwide settlement will have a deterrent effect on future alleged violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. ("FCRA") by Defendant and similar businesses.

9. There is no intra-class conflict between the class representatives and the other class members. Each class representative understands the case and why it was brought on each of their behalf. Further, Plaintiffs' attorneys are knowledgeable and experienced in class action litigation and in litigation of FCRA claims and are free from conflicts with the class.

10. Since preliminary approval, Plaintiffs have continued to serve as adequate Class Representatives by reviewing documents and submitting declarations in support of the Fee Brief; and Plaintiffs support final approval of the proposed settlement.

11. I have continued to adequately represent the interests of the Class Members and the named Plaintiffs, having, among other things, timely filed the Fee Brief on October 12, 2017 (Dkt. No. 58), dealt with the supplemental notice plan for the Group 2 Class Members, filed a Supplemental Fee Brief on May

¹ This is the total number of class members and consists of 526,627 individuals in Group 1 and 60,174 individuals from Group 2.

21, 2018 (Dkt. No. 80) and assisted with settlement administration and responded to numerous Class Members' inquiries.

RISKS OF CONTINUED LITIGATION

12. The named Plaintiffs and their counsel believe that the claims asserted in the actions have merit.

13. Taking into account the burdens, uncertainty and risks inherent in this litigation, Plaintiffs' counsel have concluded that further prosecution of this action through trial would be protracted, burdensome, and expensive, and that it is desirable, fair, and beneficial to the nationwide settlement class that the action now be fully and finally compromised, settled and terminated in the manner and upon the terms and conditions set forth in the Settlement Agreement.

CLAIMS PROCESS

14. Class Members were provided no less than ninety (90) days to make a claim for a Settlement payout.

15. The procedure for submitting a claim was made as easy as possible – a claim form could be submitted online via the Settlement Website, through IVR or by U.S. Mail.

16. I was informed by the Claims Administrator, KCC, that there were 114,512 valid claims, twenty-five requests for exclusion, and no objections.

17. I am also unaware of any objection from any of the Attorneys General.

I declare under penalty of perjury of the laws of California and the United States that the foregoing is true and correct, and that this declaration was executed in San Diego, CA on July 20, 2018.

By: /s/ Joshua B. Swigart
Joshua B. Swigart